

Exhibit 12

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC.,
MARVEL CHARACTERS, INC. and
MVL RIGHTS, LLC,

Plaintiffs,

-against-

LISA R. KIRBY, BARBARA J. KIRBY,
NEAL L. KIRBY and SUSAN M. KIRBY,

Defendants.

LISA R. KIRBY, BARBARA J. KIRBY,
NEAL L. KIRBY and SUSAN M. KIRBY,

Counterclaimants,

-against-

MARVEL ENTERTAINMENT, INC.,
MARVEL WORLDWIDE, INC.,
MARVEL CHARACTERS, INC., MVL
RIGHTS, LLC, THE WALT DISNEY
COMPANY and DOES 1 through 10,

Counterclaim-Defendants.

Civil Action No. 10-141 (CM) (KF)

**DECLARATION OF MARK
EVANIER IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

[Hon. Colleen McMahon]

[ECF Case]

DECLARATION OF MARK EVANIER

I, Mark Evanier, declare as follows:

1. I have been involved in the comic book industry for more than thirty years as a comic book writer, columnist and historian. I submit this declaration in support of defendants' opposition to plaintiffs' Motion for Summary Judgment. I have personal knowledge of the facts set forth in this Declaration and my attached expert report and, if called as a witness, could and would testify competently to such facts under oath.

2. I have been involved in the comic book industry for over forty years as a writer, columnist and historian. My first sale as a professional writer came in 1969, when I was 17 years old, and soon after I was hired by a Los Angeles-based firm that was operating a licensed fan club for the Marvel properties, called Marvelmania, which advertised in Marvel comics. The "club" was a means of merchandising items such as posters and decals of the Marvel characters, and I was hired as the local firm's in-house expert and as the editor of a fan magazine that Marvel authorized. Not long before I left that position, Jack Kirby hired me as an assistant to help him on some new comic book projects he was producing for DC Comics. I assisted him with storylines, handled research and co-authored the letter pages in his comic books and did a limited amount of art production work.

3. While apprenticing under Kirby, I began working as a comic book writer for The Walt Disney Company and also for Western Publishing ("Western"), which was issuing comic books published under the Gold Key imprint (*Bugs Bunny, Daffy Duck, Porky*, etc.). Shortly after that, I was hired as the editor and head writer for the Edgar Rice Burroughs estate (*Tarzan*).

4. In 1974, I began writing for television. My comedy writing experience includes working on *The Nancy Walker Show, Cheers, That's Incredible, Love Boat, Superboy, Pryor's Place, Bob* (starring Bob Newhart as a comic book artist) and *Welcome Back, Kotter*, where I worked as story editor. After leaving *Welcome Back*,

Kotter, I worked for and eventually ran the comic book division of Hanna-Barbera Studios, as editor and head writer.

5. My animated series writing experience includes television shows such as *Scooby Doo*, *Plastic Man*, *Thundarr the Barbarian*, *The ABC Weekend Special*, *CBS Storybreak*, *Richie Rich*, *The Wuzzles*, *Superman: The Animated Series*, *Dungeons & Dragons* and *Garfield and Friends*.

6. While I continue to work in film and television, I have also worked on a number of comic books, including writing *Superman Adventures*, *The New Gods* and *Blackhawk* for DC Comics. I was both the writer and the editor for *Blackhawk*. Since 1983, I have collaborated with artist Sergio Aragonés on the long-running comic book series, *Groo the Wanderer*, which has been published in the past by Pacific Comics, Eclipse Comics, Marvel Comics and Image Comics, and which is currently published by Dark Horse Comics. I have also written, co-created and sometimes edited several other comic books series including *The DNAgents* (with Will Meugniot) and *Crossfire* (with Dan Spiegler), both of which were published by Eclipse; *Hollywood Superstars* (with Spiegler), which was published by Marvel; and *Magnor* (with Aragonés), which was published by Malibu Comics.

7. I have been nominated for three Emmy Awards for my work on *Garfield and Friends* (two) and *Pryor's Place* (one). In 2003, I was awarded the Lifetime Achievement Award in Animation Writing by the Animation Writers Caucus of the Writers Guild of America, West (WGAW).

8. I have been a panelist or moderator at numerous comic book industry events, including the Comic-Con International in San Diego, WonderCon in San Francisco, the Big Apple Comic Convention in New York City, and the Mid-Ohio Con in Columbus, Ohio. The Comic-Con International is the largest event of its kind in the world, and each year I spend much of the convention in panels and events during which I interview the comic book "greats" about their work. For my efforts in recording and

preserving the history of the comic book art form, the convention awarded me the prestigious Bob Clampett Humanitarian Award in 2001.

9. In addition, the convention administers the industry's top award, the Will Eisner Award, which is given for excellence in the creation of comic books, and I have been awarded four "Eisners" and have been nominated seven times. The other major award in the comic book field is called the "Harvey" and I have been nominated three times for this award and have won twice.

10. Furthermore, I am active as an author writing about comic books, having published five books on the subject, including the recent *Kirby: King of Comics*, a biography of Jack Kirby which won both the Eisner and Harvey awards, and *Mad Art*, a history of *Mad Magazine*, tracing its evolution from a comic book into a magazine and other media.

11. I have been called upon to write numerous forewords and introductory material for books about comics, including many reprint volumes published by DC Comics and Marvel, and to appear on television programs and supplemental DVD materials dealing with animation and comics. These include commentary for Marvel's *Maximum Fantastic Four*, an analysis of the first issue of the Fantastic Four comic book, and the foreword for the recent *Marvel Masterworks: The Mighty Thor* Vol. 6 (reprinting past issues of The Mighty Thor) and *Marvel Masterworks: The Inhumans*.

12. At Marvel "Chairman Emeritus" Stan Lee's request, I appeared on the episode of the TV series, *Biography* (broadcast on the A&E Network and released on home video) detailing his life and career. I was interviewed as well for the feature-length documentary "With Great Power – The Stan Lee Story" and I have recently been asked by its producer-director to review this documentary for factual accuracy and to help correct factual errors. I also worked for Mr. Lee as the Vice-President of Creative Affairs at Stan Lee Media, a firm he presided over for a time.

13. I have also acted as an informal advisor and historian for most of the major comic book publishers, including DC, Marvel and Dark Horse. All these publishers have called on me from time to time to help them establish facts about their past publications and contributors. For example, I have been asked by staffers at Marvel to identify who “inked” particular Marvel comic book issues, and to determine the identity of pseudonymous contributors to various materials they have published in the past.

14. Defendants retained me in this litigation to render an expert opinion about issues in this case, including the manner in which Jack Kirby created or co-created comics and comic book characters published by Marvel between 1958-1963, as well as Kirby’s relationship with Marvel during this key period. I also rendered an opinion concerning Marvel’s policies and conduct with respect to the return of original artwork to artists, including Jack Kirby.

15. Attached hereto as “Exhibit A” is a true and correct copy of my expert report submitted to plaintiffs on November 4, 2010.

16. Attached hereto as “Exhibit B” are true and correct copies of excerpts from my book *Kirby: King of Comics*.

17. Attached hereto as “Exhibit C” is a true and correct copy of the “Jack Kirby’s Gods” portfolio that I helped Jack Kirby produce and distribute for sale both on a mail-order basis and at comic conventions starting in 1972. The portfolio contained color drawings of characters Kirby originally pitched to Marvel in the late 1960s for a re-imagined Thor comic book, which Marvel rejected. This is the second portfolio that we produced. These portfolios were distributed by a company called Communicators Unlimited that was founded by Kirby, his son Neal, Steve Sherman and myself. The company also produced and published in 1971 a book entitled *Kirby Unleashed*.

18. During the period 1958-1963, Kirby submitted and/or sold artwork to many publishers, including DC Comics, Gilbertson, Western, Harvey, Archie and Prize Comics. Kirby's work appeared in such publications as *Adventure Comics* (1958-1959), *Adventures of the Fly* (1959); *Alarming Tales* (1958), *The Double Life of Private Strong* (1959), *Challengers of the Unknown* (1958-1959), *Young Romance* (1958-1959), *My Greatest Adventure* (1958-1960); *Cracked* (1960); *Classics Illustrated* (1961) and *The World Around Us* (1961). Other freelance artists in the 1960s did this as well. Steve Ditko drew *Spider-Man* for Marvel while also submitting and selling work to Charlton Press. Vince Colletta simultaneously submitted work to Marvel, Charlton Press and Dell Comics. Joe Sinnott did work for Marvel, Archie and Treasure Chest. Robert Bernstein, who scripted issues of *Iron Man*, also submitted and sold work to DC Comics and Archie.

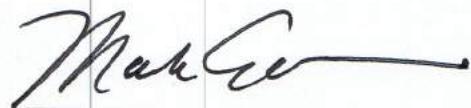
19. Kirby also pitched artwork elsewhere that he had submitted for a Marvel comic, but Marvel chose not to purchase. For instance, Kirby submitted to Marvel artwork for a new version of *Captain America* in 1968 which Marvel did not purchase. Kirby later used his artwork of the re-imagined *Captain America* as the template for a character called *Captain Glory*, first published in *Captain Glory*, No. 1 by the Topps Company in April, 1993. The artwork Kirby had submitted to Marvel was used as the cover of this first issue, without objection from Marvel.

20. While submitting artwork for the "Tales of Asgrad" feature in Marvel's *Thor* comic book in 1968-69, Kirby developed a concept he initially dubbed the "Young Gods." Soon after, Kirby drew presentation pieces of these characters to flesh out that concept and he presented this material to Marvel, which did not purchase it. That concept and several of these characters were later used by Kirby in comics published by DC in 1971, without objection from Marvel: Orion, Metron and Lightray appeared in DC's *New Gods* No. 1 (February, 1971). The Black Racer appeared in *New Gods* No. 3 (July 1971). Darkseid appeared in DC's *Superman's Pal, Jimmy Olsen* No. 134. Mr.

Miracle appeared in *Mr. Miracle* No. 1. True and correct copies of some of these presentation pieces are attached hereto as "Exhibit D."

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Dated March 25, 2011



Mark Evanier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served electronically by the Court's ECF system and by first class mail on those parties not registered for ECF pursuant to the rules of this court.

Dated: March 25, 2011

TOBEROFF & ASSOCIATES, P.C.

By: _____
s/Marc Toberoff

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